

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

IN RE: BellSouth Telecommunications, Inc. Transit)
Traffic Tariff 2005-50)

) Docket No. 2005-63-C
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**BELLSOUTH'S ANSWER TO
AT&T'S PETITION AND COMPLAINT**

Pursuant to this Commission's March 23, 2005 Notice, BellSouth Telecommunications, Inc. ("BellSouth") submits this Answer to the Petition and Complaint ("Complaint") filed by AT&T Communications of the Southern States, LLC ("AT&T") on or about February 15, 2005. For the following reasons, the Public Service Commission of South Carolina ("Commission") should reject AT&T's arguments, deny all relief requested by AT&T, and find in favor of BellSouth.

INTRODUCTION

This case involves a dispute over a transit traffic tariff. Transit traffic is traffic that originates on the network of one carrier, transits or traverses over BellSouth's network, then terminates on the network of a third carrier.¹ For example, a CLEC's end user customer may place a call to the customer of an independent, non-BellSouth ILEC. Such a call may originate with a CLEC, travel (or transit) through BellSouth's tandem switch, and terminate on the independent ILEC's network. The converse may also occur. BellSouth is essentially in the middle of such a call flow and is neither the originating nor terminating carrier of transit traffic.

¹ See e.g., *Texcom, Inc. v. Bell Atlantic Corp.*, Memorandum Opinion and Order, ¶ 4, FCC File No. EB-00-MD-14 (rel. Nov. 28, 2001); also Order No. PSC-01-0824-FOF-TP, pp. 102-105.

BellSouth has no duty under Section 251(c)(2) of the Act to provide transit traffic at TELRIC rates.² BellSouth, however, provides rates, terms and conditions for the provision of transit service to many carriers pursuant to contractual agreement and is entitled to compensation for providing this service.³ BellSouth has filed a new tariff, General Subscriber Services Tariff § A.16.1, Transit Traffic Service (“transit tariff”), that sets forth certain rates, terms and conditions that apply when carriers receive transit service from BellSouth but have not entered into a contractual agreement with BellSouth setting forth rates, terms and conditions for the provision of transit services. Because BellSouth’s transit tariff, by its own terms, applies as a default only in the absence of an existing contractual agreement, the tariff does not apply to AT&T, with whom BellSouth has an existing contractual relationship. AT&T’s petition lacks legal support and this Commission should reject AT&T’s challenges to the tariff.

As a general matter, BellSouth does not object to providing transit service to other carriers so long as it is adequately compensated for such service. In some instances, however, carriers have been unwilling to enter into contractual relationships with BellSouth that set forth the rates, terms, and conditions for BellSouth’s transit service. This problem becomes exacerbated when carriers have not entered into direct interconnection agreements with one another, electing instead to send traffic to BellSouth’s tandem switch, which traffic is intended to terminate on another carrier’s network.⁴ In the absence of a contractual relationship, BellSouth’s

² See *Virginia Arbitration Order*, ¶ 117, 17 F.C.C.R. 27039 (FCC Wireline Competition Bureau, July 17, 2002); and *In re: Arbitration Petition of Cavalier Telephone LLC*, ¶ 38 (FCC Wireline Competition Bureau, Dec. 12, 2003).

³ See *Virginia Arbitration Order*, ¶ 177 (“any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC”). Consistent with the *Virginia Arbitration Order*, even if a Commission believes that ILECs have a duty to provide transit service (which BellSouth does not), any such obligation would arise under section 251(a) and would apply equally to all carriers.

⁴ All carriers can, of course, establish direct interconnection agreements with any other carrier.

transit tariff operates as a “default,” thus preventing BellSouth from having to bear the cost of transiting traffic that it neither originates nor terminates.

RESPONSE TO SPECIFIC ALLEGATIONS

1. Paragraph 1 of the Complaint does not require a response from BellSouth.

2. Paragraph 2 of the Complaint does not require a response from BellSouth.

BellSouth also states that all correspondence, pleadings, and other documents related to this proceeding should be sent to the undersigned.

3. BellSouth admits the allegations set forth in the first sentence of Paragraph 3.

BellSouth denies the allegations in the second sentence of Paragraph 3 of the Complaint.

4. On information and belief, BellSouth admits that AT&T has obtained certain certificates to provide various telecommunications services in South Carolina. BellSouth denies that AT&T's interests are significantly affected by BellSouth's transit tariff and denies that its transit tariff is anticompetitive. BellSouth admits that it filed the transit tariff attached to AT&T's Petition, Section A16.1, Transit Traffic Service as part of its South Carolina General Subscriber Service Tariff on or about February 2, 2005 and that its Transit Tariff became effective on or before February 16, 2005. BellSouth denies any remaining allegations in Paragraph 4.

5. BellSouth admits the allegations set forth in the first sentence of Paragraph 5 of the Complaint. BellSouth admits that it provides certain facilities and services to CLECs and IXC's, one of which is transit traffic service as described above in the Introduction. BellSouth denies the remaining allegations set forth in Paragraph 5 of the Complaint.

6. BellSouth states that the relevant sections of the Act speak for themselves and require no response from BellSouth. BellSouth denies that it has any obligation under Section

251(c)(2) of the Act to provide transit service, and specifically denies that it has any obligation to provide transit services at TELRIC rates. *See Virginia Arbitration Order*, ¶ 117, 17 F.C.C.R. 27039 (FCC Wireline Competition Bureau, July 17, 2002) (“[w]e reject AT&T’s proposal because it would require Verizon to provide transit service at TELRIC rates without limitation . . . we decline, on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates. Furthermore, any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.”). BellSouth denies any remaining allegations in Paragraph 6.

7. BellSouth admits that it filed its transit tariff on February 2, 2005, which tariff has an effective date of February 16, 2005, and further admits that a copy of its tariff was attached to AT&T’s Complaint. The relevant provisions of BellSouth’s transit tariff speak for themselves and require no response from BellSouth. BellSouth denies that its filing “dramatically increase[d]” the rates charged for transit service. BellSouth’s transit tariff is a new tariff, and is not an increase in existing tariffed rates – nor does the transit tariff have any impact on rates charged for transit service pursuant to any contractual agreement between AT&T (or any other carrier) and BellSouth. BellSouth denies any remaining allegations in Paragraph 7.

8. BellSouth denies that AT&T “must use BellSouth’s transit services to interconnect with other local carriers.” AT&T may interconnect directly with any other carrier and is not required to use BellSouth’s services for interconnection. BellSouth admits that, absent a contractual agreement, the rates in its transit tariff apply as a default. BellSouth denies any remaining allegations in Paragraph 8.

8.⁵ The relevant provisions of the BellSouth/AT&T interconnection agreement speak for themselves and require no response from BellSouth. By way of further response, BellSouth states that the parties' current agreement contains an average rate for the tandem switching and common transport rate elements ordered by this Commission and does not contain the additional Tandem Intermediary Charge (TIC). BellSouth's standard interconnection agreements for CLECs and CMRS providers currently contain a TIC charge of \$0.0025, which is charged in addition to tandem switching and common transport. BellSouth's standard agreements with CMRS providers contain a transit rate of \$0.003, which is a composite rate. BellSouth denies that it has any obligation to provide transit services at TELRIC rates, and denies that its transit rate is unfair or anticompetitive. BellSouth denies any remaining allegations in Paragraph 8 [sic].

9. The relevant South Carolina statutes cited speak for themselves and require no response from BellSouth. BellSouth denies any implication that its tariff violates any applicable statutory provision.

10. BellSouth denies that it is a monopoly provider of transit traffic service. Any carrier may elect to provide transiting services, and any carrier is free to establish independent, direct interconnection agreements. BellSouth denies that its transit tariff and its transit tariff rate violate any provisions of South Carolina and/or federal law. BellSouth denies any remaining allegations in Paragraph 10.

11. BellSouth denies that the Complainants are entitled to any of the relief sought in the WHEREFORE clause of the Complaint.

12. Any allegation not expressly admitted herein is denied.

⁵ Two consecutive paragraphs in the Complaint are labeled "8." To avoid confusion, BellSouth will use the same numbering convention in this Answer as was used in the Complaint.

AFFIRMATIVE DEFENSES

13. AT&T's Complaint fails to state a claim upon which relief can be granted.

Respectfully submitted this 15th day of April, 2005.

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STATE OF SOUTH CAROLINA

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CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Answer to AT&T's Petition and Complaint in Docket No. 2005-63-C to be served upon the following this April 15, 2005:

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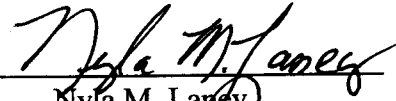
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